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ABSTRACT

This information memorandum describes Wisconsin laws relating to compulsory school attendance and truancy. It outlines school-attendance requirements, exceptions, and alternatives; the written attendance policy; key definitions regarding truancy and school-attendance enforcement; and information on the truancy-planning committee and truancy plan. It highlights the duties of the school-attendance officer, such as daily attendance, annual reports, notices to parents of habitually truant children, access to places of employment, and access to private-school attendance records. The document details the process for taking truants into custody and the roles played by law enforcement officers, the school-district designee, and youth-service centers. It discusses detention, the directed-study program and assessment period, and required school activities. The workings of the juvenile and municipal courts are described, along with information on the filing of information, the intake inquiry, deferred prosecution, juvenile-court petition, summons, fact-finding hearing, and dispositional hearing. It looks at juvenile court disposition, including dispositional alternatives and teen court. Details on the municipal ordinance authority and dispositions, sanctions for violations of dispositional orders, prosecution of parent or other person in control of the child, Learnfare, and other matters are discussed. (RJM)

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COMPULSORY SCHOOL ATTENDANCE AND TRUANCY LAWS

Information Memorandum 98-27

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Information Memorandum 98-27*

COMPULSORY SCHOOL ATTENDANCE AND TRUANCY LAWS

INTRODUCTION

This Information Memorandum describes current Wisconsin laws relating to compulsory school attendance and truancy. The major legislation enacted during the 1997-98 Legislative Session affecting these laws was 1997 Wisconsin Act 239. However, as indicated in the citations throughout this Memorandum, numerous other enactments of the 1997-98 Legislative Session also affected the relevant statutes.

Copies of all acts referred to in this Information Memorandum may be obtained from the Documents Room, Lower Level, One East Main Street, Madison, Wisconsin 53702; telephone: (608) 266-2400.

This Information Memorandum revises and updates Wisconsin Legislative Council Staff Memorandum 97-1, dated February 27, 1997. This Information Memorandum is divided into the following parts:

Page

A. SCHOOL ATTENDANCE REQUIREMENTS, EXCEPTIONS AND ALTERNATIVES 5

1. General Requirements 5

2. Exceptions and Alternatives 5

B. WRITTEN ATTENDANCE POLICY; COURSE CREDIT AND EXAMINATIONS 8

C. KEY DEFINITIONS RELATED TO TRUANCY AND SCHOOL ATTENDANCE ENFORCEMENT 9

D. TRUANCY PLANNING COMMITTEE AND TRUANCY PLAN 9

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* This Information Memorandum was prepared by Jane R. Henkel, Deputy Director, Legislative Council Staff.

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Page

E. SCHOOL ATTENDANCE OFFICER: DAILY ATTENDANCE, ANNUAL REPORT, PARENTAL NOTICE AND MEETING, AND ACCESS TO RECORDS 11

1. Daily Attendance 12

2. Annual Report 12

3. Notice to Parents of Truant Children 12

4. Notice to Parents of Habitually Truant Children and Meeting 12

5. Access to Places of Employment 13

6. Access to Private School Attendance Records 13

F. TAKING TRUANTS INTO CUSTODY; YOUTH SERVICE CENTERS ... 14

1. Law Enforcement Officers 14

2. School District Designee Upon Specific Request 15

3. Youth Service Centers 16

G. DETENTION; SUPERVISED, DIRECTED STUDY PROGRAM; AND ASSESSMENT PERIOD 17

1. Detention or Supervised, Directed Study Program 17

2. Assessment Period 17

3. Policies 18

H. REQUIRED SCHOOL ACTIVITIES 18

I. JUVENILE AND MUNICIPAL COURT JURISDICTION 19

1. Truants 19

2. Habitual Truants and Dropouts 19

J. JUVENILE COURT PROCEDURES 20

1. Filing of Information 20

2. Intake Inquiry 20

3. Deferred Prosecution 21

4. Juvenile Court Petition 23

Page

5. Notice; Summons 23
6. Plea Hearing 23
7. Consent Decree 24
8. Fact-Finding Hearing 25
9. Dispositional Hearing 25

K. JUVENILE COURT DISPOSITIONS 25
1. Dispositional Alternatives 25
2. Notice of School Attendance as a Condition in a Dispositional Order ... 29

L. TEEN COURT 29

M. MUNICIPAL ORDINANCE AUTHORITY AND DISPOSITIONS 30
1. Truancy 30
2. Habitual Truancy 30
3. Dropouts 32
4. Scope of County Ordinances 32

N. SANCTIONS FOR VIOLATIONS OF DISPOSITIONAL ORDERS 32
1. Truancy 33
2. Habitual Truancy 33
3. Dropouts 34
4. Continued Violations 35

O. PROSECUTION OF PARENT OR OTHER PERSON IN CONTROL OF THE CHILD 35

P. PROSECUTION FOR CONTRIBUTING TO A CHILD'S TRUANCY; MUNICIPAL ORDINANCES 36

Q. LEARNFARE 36

R. MISCELLANEOUS 37
1. Community Service Immunity 37

Page

2. Prohibition Against the Issuance of a License to a Habitual Truant or Dropout 37

3. Names of Dropouts (Driver's Licenses) 37

4. Audit 38

A. SCHOOL ATTENDANCE REQUIREMENTS, EXCEPTIONS AND ALTERNATIVES

1. General Requirements

Generally, any person having under his or her control a child who is between the ages of six and 18 (e.g., the child's parent or guardian) must cause the child to attend school regularly during the full period and hours, religious holidays excepted, that the public or private school in which the child should be enrolled is in session until the end of the school term, quarter or semester of the school year in which the child turns 18 years of age, unless the child has been excused or graduated from high school. [s. 118.15 (1) (a), Stats.]

Also, a school board may not grant a high school diploma to any pupil unless, during the high school grades, the pupil has been enrolled in a class or has participated in an activity approved by the school board during each class period of each school day or the pupil has been enrolled in an alternative education program. This requirement does not, however, prohibit a school board from establishing a program that allows a pupil enrolled in the high school grades who has demonstrated a high level of maturity and personal responsibility to leave the school premises for up to one class period each day if the pupil does not have a class scheduled during that class period. [s. 118.33 (1) (b), Stats., as affected by 1997 Wisconsin Act 113.]

2. Exceptions and Alternatives

The statutes contain the following exceptions and alternatives to the general requirement that a child attend a public or private school regularly:

a. ***Absences excused by a parent:*** An exception to compulsory school attendance applies to a child who is excused, in writing, by his or her parent or guardian before the child's absence. A child may not be excused for more than 10 days in a school year under this provision and the child must make up any course work missed during the absence.[1] [s. 118.15 (3) (c), Stats., as created by 1997 Wisconsin Act 239.]

b. ***Religious holidays:*** As described above, the statutes provide an exception for religious holidays [s. 118.15 (1) (a), Stats.]

c. ***Attendance at a technical college:*** Upon the child's request of the school board and with the written approval of the child's parent or guardian, a child who is ***16 years of age or older*** and a child at risk may attend, in lieu of high school or on a part-time basis, a Technical College System school if the child and his or her parent or guardian agree, in writing, that the child will participate in a program leading to the child's ***high school graduation***. The district board of the technical college district in which the child resides must admit the pupil. Every

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1. The exception created by this provision would not preclude a school board from authorizing additional absences requested by a parent pursuant to its attendance policy, described in item h., below.

technical college district board must offer day class programs satisfactory to meet these requirements as a condition to the receipt of any state aid. The school board must pay tuition to the technical college district board and provide transportation or board and lodging. The pupils are included in the school district's membership for state school aid purposes and the school district also receives transportation aid. [ss. 118.15 (1) (b) and (2) and 121.05 (1) (a) 5., Stats., as affected by 1997 Wisconsin Act 27.]

d. ***Program or curriculum modifications for 16- or 17-year olds:*** Upon the child's request and with the written approval of the child's parent or guardian, any child who is ***16 years of age or older*** may be excused by the school board from regular school attendance if the child and his or her parent or guardian agree, in writing, that the child will participate in a program or curriculum modification, described in item f., below, leading to the child's ***high school graduation***. A child who is ***17 years of age or older*** may be similarly excused from regular school attendance to participate in a program or curriculum modification leading to the child's ***high school graduation*** or to a ***high school equivalency diploma***. Prior to a 16- or 17-year old child's admission to such a program, the child, his or her parent or guardian, the school board and a representative of the program must enter into a written agreement. The written agreement must state the services to be provided, the time period needed to complete the program and how the performance of the pupil will be monitored. The agreement must be monitored by the school board on a regular basis but not less often than once per semester. If the school board determines that the child is not complying with the agreement, the school board must notify the child, his or her parent or guardian and the operator of the program that the agreement may be modified or suspended in 30 days. [s. 118.15 (1) (c), Stats.]

e. ***Seventeen-year olds beginning programs in secured correctional facilities:*** Upon the child's request and with the approval of the child's parent or guardian, a child who is ***17 years of age or older*** must be excused by the school board from regular school attendance if the child had begun a program leading to a ***high school equivalency diploma in a secured correctional facility, a secured child caring institution, a secured detention facility or the juvenile portion of a county jail*** and the child and his or her parent or guardian agree that the child will continue to participate in such a program. The child and his or her parent or guardian must enter into a written agreement with the school board and a representative of the agency providing the program which is similar to the agreement described in item d., above. The State Superintendent of Public Instruction must grant a high school equivalency diploma to such a child who completes the general educational development (GED) test with a passing score, as determined by the State Superintendent, and completes additional requirements determined by the State Superintendent. School districts neither pay tuition nor other costs for these children nor count these children in their memberships. If the program the child wishes to attend is provided by a technical college district, the district must admit the child. The child is not required to pay fees for attending the district; costs are borne by the technical college district, including through increased fees charged to other technical college students enrolled in post-secondary and vocational education programs. [s. 118.15 (1) (cm), Stats., as affected by 1997 Wisconsin Acts 27 and 205.]

f. ***Program or curriculum modifications:*** Any child's parent or guardian, or the child if the parent or guardian is notified, may request a school board, in writing, to provide the child with program or curriculum modifications, including but not limited to:

(1) Modifications within the child's current academic program.

(2) A school work training or work study program.

(3) Enrollment in any alternative public school or program located in the school district.

(4) Enrollment in any nonsectarian private school or program located in the school district which complies with federal nondiscrimination laws. Such enrollment must be pursuant to a contractual agreement which provides for the payment of the child's tuition by the school district.

(5) Homebound study, including nonsectarian correspondence courses or other courses of study approved by the school board or nonsectarian tutoring provided by the school in which the child is enrolled.

(6) Enrollment in any public educational program located outside of the school district in which the child resides. Such enrollment must be pursuant to a contractual agreement between school districts.

[s. 118.15 (1) (d), Stats.]

A school board must render its decision regarding the requested curriculum or program modification, in writing, within 90 days of the request. However, if the request relates to a child who has been examined by an individualized education program team under the special education laws and has not been recommended for special education, the school board must render its decision within 30 days of the request. If the school board denies a request, it must give its reasons for the denial. Any decision made by the school board or its designee in response to a request must be reviewed by the school board upon request of the child's parent or guardian. The school board's decision must be in writing, if requested by the parent or guardian. [s. 118.15 (1) (dm) and (e), Stats., as affected by 1997 Wisconsin Act 164.]

The school board must notify pupils enrolled in the school district and their parents and guardians of the substance of their rights to request program or curriculum modifications under this provision at the beginning of each school term. [s. 118.15 (1) (f), Stats.]

g. ***Physical or mental conditions:*** The school attendance requirement does not apply to a child who is excused by the school board because he or she is temporarily not in proper physical or mental condition to attend a school but can be expected to return to a school upon termination or abatement of the illness or condition. A school attendance officer may request a parent or guardian to obtain a written statement from a licensed physician, dentist, chiropractor, optometrist or psychologist or a Christian Science practitioner living and residing in the state

who is listed in the *Christian Science Journal*, as sufficient proof of the physical or mental condition of the child. The excuse must be in writing and state the time period for which it is valid, not to exceed 30 days. [s. 118.15 (3) (a), Stats., as affected by 1997 Wisconsin Act 164.]

h. ***School board's attendance policy:*** A child may be excused from the regular school attendance requirement by the school board in accordance with the school board's written attendance policy (described in Section B., below) and with the written approval of the child's parent or guardian. The child's truancy, discipline or school achievement problems or disabilities may not be used as the reason for an excuse under this provision. The excuse must be in writing and state the time period for which it is effective, not to extend beyond the end of the current school year. [s. 118.15 (3) (b), Stats., as affected by 1997 Wisconsin Act 164.]

i. ***Home-based private educational program:*** Instruction in a home-based private educational program may be substituted for attendance at a private or public school if the program: (1) has a primary purpose of providing private or religious-based education; (2) is privately controlled; (3) provides at least 875 hours of instruction each school year; (4) provides a sequentially progressive curriculum of fundamental instruction in reading, language arts, mathematics, social studies, science and health; (5) is not operated or instituted for the purpose of avoiding or circumventing the compulsory school attendance requirement; and (6) has as pupils children who, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than two months of summer vacation, or is licensed as a child welfare agency. [ss. 118.15 (4) and 118.165 (1), Stats.]

j. ***Assessment period:*** A pupil assigned to an assessment period, as described in Section G. 2., below, is not in violation of the compulsory school attendance requirements. [s. 118.16 (4) (cm), Stats.]

B. WRITTEN ATTENDANCE POLICY; COURSE CREDIT AND EXAMINATIONS

Every school board must establish a written attendance policy specifying the reasons for which pupils may be permitted to be absent from school. [s. 118.16 (4) (a), Stats.]

No public school may deny a pupil credit in a course or subject solely because of the pupil's unexcused absences from school. The school board's written attendance policy must specify the conditions under which a pupil may be permitted to take examinations missed during absences, other than suspensions, and the conditions under which a pupil shall be permitted to take any quarterly, semester or grading period examinations missed during a period of suspension. [s. 118.16 (4) (b), Stats.]

The school board must provide each pupil with a copy of its written attendance policy and its policies relating to assignment to detention, a supervised, directed study program or an assessment period as a consequence of truancy. (See Section G., below, relating to detention, supervised, directed study programs and assessment period policies.) Copies of the policies must also be filed in each school in the district and made available upon request. [s. 118.16 (4) (d), Stats.]

C. KEY DEFINITIONS RELATED TO TRUANCY AND SCHOOL ATTENDANCE ENFORCEMENT

The following key definitions apply under the statutes related to truancy and school attendance enforcement:

1. "Truancy" means either of the following:

> (a) Any absence of part or all of one or more days from school during which the school attendance officer, principal or teacher has not been notified of the legal cause of the absence by the pupil's parent or guardian.
>
> (b) Intermittent attendance carried on for the purposes of defeating the intent of the compulsory school attendance law.
>
> [s. 118.16 (1) (c), Stats.]

2. "Truant" means a pupil who is absent from school without an acceptable excuse for part or all of any day on which school is held during a school semester. [s. 118.163 (1) (d), Stats., as created by 1997 Wisconsin Act 239.]

3. "Habitual truant" means a pupil who is absent from school without an acceptable excuse for part or all of five or more days on which school is held during a school semester. [s. 118.16 (1) (a), Stats., as affected by 1997 Wisconsin Act 239.]

4. "Dropout" means a child who ceased to attend school, does not attend a public or private school, technical college or home-based private educational program on a full-time basis, has not graduated from high school, is not enrolled in a program leading to high school graduation or a high school equivalency diploma and does not have an acceptable excuse for being absent from school. [ss. 118.153 (1) (b) and 118.163 (1) (a), Stats.]

5. "School attendance officer" means an employe designated by the school board to deal with matters relating to school attendance and truancy. "School attendance officer" does not include a person designated to take truants into custody as described in Section F. 2., below, unless that person has also been designated to deal with matters related to school attendance and truancy. [s. 118.16 (1) (b), Stats.]

D. TRUANCY PLANNING COMMITTEE AND TRUANCY PLAN

1987 Wisconsin Act 285 required the establishment of truancy planning committees in each county. The committees were required to make recommendations, not later than February 1, 1989, to school boards in the county on the items to be included in the school districts' truancy plans.

By September 1, 1989, each school board was required to adopt a truancy plan which included all of the following:

1. Procedures to be followed for notifying the parents or guardians of the unexcused absences of habitual truants and for meeting and conferring with such parents or guardians.

2. Plans and procedures for identifying truant children of all ages and returning them to school, including the identity of school personnel to whom a truant child shall be returned.

3. Methods to increase and maintain public awareness of and involvement in responding to truancy within the school district.

4. The immediate response to be made by school personnel when a truant child is returned to school.

5. The types of truancy cases to be referred to the district attorney for the filing of information with juvenile court or for the prosecution of an adult for failing to cause a truant child to attend school regularly, and the time periods within which the district attorney will respond to and take action on the referrals.

6. Plans and procedures to coordinate the responses to the problems of habitual truants with public and private social services agencies.

7. Methods to involve the truant child's parent or guardian in dealing with and solving the child's truancy problem.

[s. 118.162 (4), Stats.]

1997 Wisconsin Act 239 requires each school board to review and, if appropriate, revise its truancy plan at least once every two years. The Act also requires the school district administrator of the school district which contains the county seat, or his or her designee, to convene a county truancy planning committee, at least once every four years, to review and make recommendations to school districts in the county on revisions to their truancy plans. [s. 118.162 (1) (intro.) and (4m), Stats., as affected by 1997 Wisconsin Act 239.]

Under Act 239, each county truancy planning committee must consist of a representative of each of the following:

1. Each school district in the county, designated by the school board. This person may be a school board member, school administrator, teacher, pupil services professional or parent.

2. The district attorney's office, designated by the district attorney. (This representative must participate in reviewing and developing any recommendations regarding revisions to the portion of the plan described in item 5., above.)

3. The sheriff's department, designated by the sheriff.

4. Another local law enforcement agency, designated by the agency's chief administrative officer.

5. The circuit court, designated by the chief judge of the judicial administrative district.

6. The county social services or human services agency, designated by the agency's director.

7. The juvenile court intake unit, designated by the county social services director or chief judge of the judicial administrative district.

8. The county community programs or developmental disabilities department (if the county has not established a human services agency), designated by the department's director.

9. A parent of a pupil in a nonpublic school who resides in a school district in the county, designated by the county board.

10. A parent of a pupil in a public school who resides in a school district in the county, designated by the county board.

11. A parent of a pupil who is home-schooled who resides in a school district in the county, designated by the county board.

Additional members may be determined and appointed by the committee.

[s. 118.162 (1) and (2), Stats., as affected by 1997 Wisconsin Act 239.]

The county truancy planning committee must write a report to accompany its recommendations which includes: (1) a description of the factors contributing to truancy in the county; and (2) a description of any state statutes, municipal ordinances or school, social services, law enforcement, district attorney, court or other policies contributing to or inhibiting the response to truancy in the county. A copy of the report must be submitted to each of the entities appointing members to the committee. [s. 118.162 (3), Stats., as affected by 1997 Wisconsin Act 239.]

E. SCHOOL ATTENDANCE OFFICER: DAILY ATTENDANCE, ANNUAL REPORT, PARENTAL NOTICE AND MEETING, AND ACCESS TO RECORDS

Although not explicitly stated in the statutes, it appears that every school district must designate a school attendance officer since specific duties are assigned to this officer.

A school attendance officer's responsibilities include attendance monitoring, notifying parents when their children are truant, filing information with the juvenile court regarding habitually truant children and providing evidence to the court that certain required school activities have been completed with regard to a habitually truant child. The school attendance officer may visit places of employment and have access to private school attendance records.

1. Daily Attendance

The school attendance officer must determine, daily, which pupils enrolled in the school district are absent from school and whether that absence is excused. The school board must require teachers to submit daily attendance reports on all pupils under their charge to the school attendance officer. [s. 118.16 (2) (a) and (4) (a), Stats.]

2. Annual Report

Annually, on or before August 1, the school attendance officer must determine how many pupils enrolled in the school district were absent in the previous school year and whether the absences were excused. The officer must notify the State Superintendent of Public Instruction of the determination. [s. 118.16 (2) (b), Stats., as affected by 1997 Wisconsin Act 27.] The statutes do not specify how these absences are to be counted but the Department of Public Instruction (DPI) requires attendance reporting according to possible and actual days of face-to-face instruction, reported to the 1/2 day, e.g., 178 days x 10 pupils = 1,780 possible (or actual) days.

3. Notice to Parents of Truant Children

The school attendance officer must notify the parent or guardian of a child who has been truant of the child's truancy and direct the parent or guardian to either: (a) return the child to school no later than the next day in which school is in session; or (b) provide an acceptable excuse. This notice must be given before the end of the second school day after receiving a report of an unexcused absence.

The notice may be by personal contact, mail or telephone call of which a written record is kept, except that notice by personal contact or telephone call must be attempted before notice by mail is given.

[s. 118.16 (2) (c), Stats.]

4. Notice to Parents of Habitually Truant Children and Meeting

The school attendance officer must notify the parent or guardian of a child who is a habitual truant when the child initially becomes a habitual truant. This notice must be given by registered or certified mail and must include all of the following:

a. A statement of the parent's or guardian's responsibility to cause the child to attend school regularly.

b. A request that the parent or guardian meet with appropriate school personnel to discuss the child's truancy. The notice must include the name of the school personnel with whom the parent or guardian should meet, a date, time and place for the meeting and the name, address and telephone number of a person to contact to arrange a different date, time and place. The date for the meeting must be within ***five school days*** after the date that the notice is sent,

except that, with the consent of the child's parent or guardian, the date for the meeting may be extended for an additional five school days.

c. A statement of the penalties, described in Section O., below, that may be imposed on the parent or guardian if he or she fails to cause the child to attend school regularly.

[s. 118.16 (2) (cg), Stats., as affected by 1997 Wisconsin Act 239.]

After this notice has been given, the school attendance officer must notify the parent or guardian of a habitual truant of the child's unexcused absences as provided in the truancy plan adopted by the school board; the notice requirement described in item 2., above, no longer applies. [s. 118.16 (2) (cr), Stats.]

If a meeting between the school personnel and parent or guardian, requested under item b., above, is not ***held*** within ***10 school days*** after the date the notice is sent, the parent or guardian ***may*** be prosecuted for failing to cause the child to attend school regularly and municipal or juvenile court proceedings relating to the child may be initiated ***without a meeting*** between the parent or guardian and school personnel. [s. 118.16 (5m), Stats., as affected by 1997 Wisconsin Act 239.] This modifies the requirement, described in Section H. 1., below, that before a parent or guardian may be prosecuted or proceedings relating to a habitually truant child may be initiated, a school attendance officer must provide evidence that appropriate school personnel have, within the school year during which the truancy occurred met or attempted to meet with the child's parent or guardian. [ss. 118.16 (5), 938.125 (2), 938.13 (6) and 938.17 (2) (a) 1., Stats., as affected by 1997 Wisconsin Acts 35 and 239.]

As described in Section D., above, each school board must have a truancy plan which includes, among other things: (a) procedures for notifying parents or guardians of the unexcused absences of habitual truants and for meeting and conferring with the parents and guardians; and (b) the types of truancy cases to be referred to the district attorney for the filing of information with the juvenile court and the time periods within which the district attorney will respond and take action. [s. 118.162 (4), Stats.]

5. Access to Places of Employment

The school attendance officer may visit any place of employment in the school district to ascertain whether any minors are employed there contrary to law. The officer must require that school certificates and lists of minors who are employed there be produced for inspection and must report all cases of illegal employment to the proper school authorities and to the Department of Workforce Development (DWD). [s. 118.16 (2) (d), Stats., as affected by 1997 Wisconsin Act 3.]

6. Access to Private School Attendance Records

A private school must provide the school attendance officer access to information regarding the attendance of any child between the ages of six and 18 years who is a resident of the

school district or who claims or is claimed to be in attendance at a private school located in the school district. Private schools must provide information regarding such children to the school attendance officer, upon request, on forms supplied by the officer, and must keep attendance records which are open to the inspection of the school attendance officer at all reasonable times [ss. 115.30 (2) and 118.16 (2) (e) and (3), Stats.].

F. TAKING TRUANTS INTO CUSTODY; YOUTH SERVICE CENTERS

There are two provisions of current law which allow a juvenile (person under the age of 18 years) to be taken into custody solely on the basis of truancy.

1. Law Enforcement Officers

A law enforcement officer may take into custody a juvenile who is absent from school without an acceptable excuse. [s. 938.19 (1) (d) 10., Stats.] The officer must then immediately attempt to notify the child's parent, guardian or legal custodian by the most practical means and continue such attempt until the parent, guardian or legal custodian is notified. [s. 938.19 (2), Stats.]

A law enforcement officer who takes into custody a juvenile who is absent from school without an acceptable excuse may release the child as follows:

a. Immediately to the child's parent, guardian or legal custodian. [s. 938.20 (2) (ag) and (e), Stats.]

b. If the child's parent, guardian or legal custodian is unavailable, unwilling or unable to provide supervision for the child, to another responsible adult after counseling or warning the child as may be appropriate. The law enforcement officer must immediately notify the child's parent, guardian and legal custodian of the time and circumstances of the release and the person to whom the child was released. [s. 938.20 (2) (b) and (e) and (3), Stats.]

c. To a youth service center, described in item 3., below, if the school board of the school district in which the child resides has established such a center. Personnel of the youth service center may release the child to the child's parent, guardian or legal custodian or to the child's school, after counseling the child as may be appropriate. If the child is released to the child's school, personnel of the youth service center shall immediately notify the child's parent, guardian and legal custodian that the child was taken into custody and released to the child's school. [s. 938.20 (2) (e), Stats.]

If the law enforcement officer does not release the child under any of the above provisions, the child must be released without immediate adult supervision after counseling or warning as appropriate. The law enforcement officer must immediately notify the child's parent, guardian or legal custodian of the time and circumstances of the release. [s. 938.20 (2) (g) and (3), Stats.]

2. School District Designee Upon Specific Request

A school district administrator (superintendent) may designate a specific individual to take into custody a juvenile who is absent from school without an acceptable excuse if requested to do so by the school attendance officer of the school district in which the juvenile resides or the juvenile's parent, guardian or legal custodian. The request must specifically identify the child. [s. 938.19 (1m), Stats.]

Individuals who may be designated to take a child into custody under these provisions are any of the following:

a. An employe of the school district who is directly involved in the provision of educational programs or services to the child.

b. An employe of the school district who is directly involved in the provision, to other children in the child's school, of program or curriculum modifications, a program for children at risk or an alternative education program, if the school district administrator believes that the program or curriculum may be appropriate for the truant child.

c. A school social worker employed by the school district who provides services to children attending the school attended by the truant child, if the school district administrator believes that such services may be appropriate for the truant child.

d. An employe of a social services agency who is directly involved in the provision of social services to the truant child or the child's family.

e. A school attendance officer, but only if the school attendance officer meets one of the criterion specified in items a. to c., above.

[s. 118.16 (2m) (a), Stats.]

The designation must be in writing and specifically identify the child whom the individual may take into custody. Also, an individual may not be designated to take a truant child into custody unless the individual agrees to the designation in writing. [s. 118.16 (2m) (b) and (c), Stats.]

The school district administrator must provide the individual designated to pick up a truant child with an identification card of a form determined by the school board. The individual must carry the card while on official duty under this provision and exhibit the card to any person to whom he or she represents himself or herself as a person authorized to take a child into custody. [s. 118.16 (2m) (d), Stats.]

The school district administrator or person designated to take a child into custody must immediately attempt to notify the child's parent, guardian and legal custodian, by personal contact or telephone call, of the designation and that the child may be taken into custody, unless

the parent, guardian or legal custodian requested that the child be taken into custody. [s. 118.16 (2m) (e), Stats.]

Any juvenile (truant child) taken into custody under these provisions may be released as follows:

a. Immediately to the child's parent, guardian or legal custodian. [s. 938.20 (2) (ag) and (f), Stats.]

b. If the child's parent, guardian or legal custodian is unavailable, unwilling or unable to provide supervision for the child, to another responsible adult after counseling or warning the child as may be appropriate. The person who took the child into custody must immediately notify the child's parent, guardian and legal custodian of the time and circumstances of the release and the person to whom the child was released. [s. 938.20 (2) (b) and (f) and (3), Stats.]

c. To a youth service center, described in item 3., below, if the school district in which a child resides has such a center. Personnel of the youth service center may release the child to the child's parent, guardian or legal custodian or to the child's school, after counseling the child as may be appropriate. If the child is released to the school, the youth service center must immediately notify the child's parent, guardian or legal custodian that the child was taken into custody and released to the child's school. [s. 938.20 (2) (e) and (f), Stats.]

d. To the child's school administrator (principal) or a school employe designated by the school administrator. If the child is released to the administrator or designee, the administrator or designee must immediately notify the child's parent, guardian or legal custodian that the child was taken into custody and released to the administrator or designee. The administrator or designee must also: (1) make a determination of whether the child is a child at risk, unless such a determination has been made within the current school semester; and (2) provide the child and his or her parent or guardian an opportunity for educational counseling to determine whether a change in the child's program or curriculum would resolve the child's truancy problem, unless that opportunity has been provided in the current school semester. [s. 938.20 (2) (f), Stats.]

If the child is not released under any of the above provisions, the child must be released without immediate adult supervision after counseling or warning as appropriate. The person who took the child into custody must immediately notify the child's parent, guardian or legal custodian of the time and circumstances of the release. [s. 938.20 (2) (g) and (3), Stats.]

3. Youth Service Centers

A school board may establish one or more youth service centers for counseling truant children taken into custody. The Milwaukee Public Schools (MPS) must establish two youth service centers and must contract with the Boys and Girls Clubs of Greater Milwaukee for the operation of the centers. [ss. 118.16 (4) (e) and 119.55 (1), Stats., as affected by 1997 Wisconsin Acts 35 and 113.]

The MPS must pay the City of Milwaukee a sum sufficient to fund the costs of salaries and fringe benefits for four law enforcement officers to work on truancy abatement and burglary suppression on a full-time basis. [s. 119.55 (2), Stats., as affected by 1997 Wisconsin Act 113.]

G. DETENTION; SUPERVISED, DIRECTED STUDY PROGRAM; AND ASSESSMENT PERIOD

1. Detention or Supervised, Directed Study Program

A school board may establish policies which provide that, as a consequence of a pupil's truancy, the pupil may be assigned to detention or to a supervised, directed study program. The program need not be held during the regular school day. The policies must specify the conditions under which credit may be given for work completed during the period of detention or assignment to a supervised, directed study program. A pupil must be permitted to take any examinations missed during a period of assignment to such a program. [s. 118.16 (4) (c), Stats.]

2. Assessment Period

A school board may establish policies to permit a pupil of an age eligible for high school enrollment in the school district to be assigned to a period of assessment as a consequence of the pupil's truancy or upon the pupil's return to school from placement in a correctional facility, mental treatment facility, alcohol and other drug abuse treatment facility or other out-of-school placement. The school board policies must specify the conditions under which the pupil may participate in the assessment without being in violation of school attendance laws and the maximum length of time that a pupil may be assigned to an assessment period.

A pupil may not be required to participate in an assessment period without the written approval of the pupil's parent or guardian. A pupil may not be assigned to an assessment period for longer than the time necessary to complete the assessment and place the pupil in an appropriate program or eight weeks, whichever is less. A school board may not assign a pupil to an assessment period more than once and may not assign a pupil to an assessment period if the school district has an alternative education program (defined in s. 115.28 (7) (e) 1., Stats.), available for the pupil that is appropriate to the pupil's needs.

An assessment period need not be conducted during the regular school day.

The goals of an assessment period are to develop an educational plan for the pupil, implement an appropriate transitional plan and facilitate the pupil's placement in an education program in which the pupil will be able to succeed. The school board must provide pupils who are assigned to an assessment period with information on other education programs that the school district or other community providers have available for the pupil.

The assessment period may include any of the following new or previously completed activities:

1. An assessment for problems with alcohol or other drugs.

2. An assessment of individual educational needs.

3. An assessment of whether the pupil is encountering problems in the community or at home that require intervention by a social worker.

4. A vocational assessment, which may include career counseling.

5. A medical assessment.

[s. 118.16 (4) (cm), Stats.]

3. Policies

A school board must provide each pupil with a copy of any policies adopted pursuant to the authorization to use detention, supervised, directed study programs and assessment periods as a consequence for truancy and file a copy of the policies in each school in the school district. In addition, the school board must make copies available upon request. [s. 118.16 (4) (d), Stats.]

H. REQUIRED SCHOOL ACTIVITIES

Prior to any proceeding being brought against a child for habitual truancy or against the child's parent or guardian for failing to cause the child to attend school regularly, the school attendance officer must provide evidence that appropriate school personnel in the school or school district in which the child is enrolled have, within the school year during which the truancy occurred, done all of the following:

1. Met with the child's parent or guardian to discuss the child's truancy or attempted to meet with the child's parent or guardian and received no response or been refused. As described in Section E. 4., above, this meeting is not required if it is not held within 10 days of the school district's initial notice to the parent or guardian that the child is a habitual truant.

2. Provided an opportunity for educational counseling to the child to determine whether a change in the child's curriculum would resolve the child's truancy and considered curriculum modifications as described in Section A. 2. f., above.

3. Evaluated the child to determine whether learning problems may be the cause of the child's truancy and, if so, taken steps to overcome the learning problems, except that the child need not be evaluated if tests administered within the previous year indicate that the child is performing at his or her grade level.

4. Conducted an evaluation to determine whether social problems may be the cause of the child's truancy and, if so, taken appropriate action or made appropriate referrals.

The activities in items 2., 3. and 4., above, need not be carried out if the school attendance officer provides evidence that appropriate school personnel were unable to carry out the activity due to the child's absences from school.

[ss. 118.16 (5), (5m) and (6), 938.125 (2), 938.13 (6) (intro.) and 938.17 (2), Stats., as affected by 1997 Wisconsin Acts 35, 205 and 239.]

I. JUVENILE AND MUNICIPAL COURT JURISDICTION

Proceedings relating to a child who is a truant, habitual truant or dropout may be brought in either juvenile court (a court assigned to exercise jurisdiction in juvenile matters under ch. 48 or 938, Stats.), or municipal court.

(Concurrently with these actions, a person in control of a child may be prosecuted in circuit court for failing to cause the child to attend school regularly, as described in Section O., below.)

1. Truants

Proceeding relating to a child who is a "***truant***" may be brought in juvenile or municipal court as follows:

a. A ***juvenile court*** may obtain jurisdiction over a child who is less than 17 years of age[2] and is alleged to be a truant in one of two ways: (1) through the filing of information alleging that the child has violated a municipal truancy ordinance; or (2) through the issuance of a citation to the child alleging that the child has violated a municipal truancy ordinance and directing the child to appear in juvenile court.

b. A ***municipal court*** may obtain jurisdiction over a child aged 12 years or older but less than 18 years of age when the child is alleged to have violated a municipal truancy ordinance and is issued a citation directing the child to appear in municipal court.

[ss. 938.02 (10m), 938.125 (intro.) and (1) and 938.17 (2), Stats., as affected by 1997 Wisconsin Acts 205 and 239.]

2. Habitual Truants and Dropouts

Proceedings relating to a child who is a "***habitual truant***" or a "***dropout***" may be brought in either juvenile court or municipal court, as follows:

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2. Juvenile courts have jurisdiction in proceedings against juveniles under the age of 17 who violate municipal ordinances, including truancy, habitual truancy and dropout ordinances. [ss. 938.02 (10m) and 938.17 (2) (a) 1., Stats., as affected by 1997 Wisconsin Act 239.] Regular circuit courts have jurisdiction over 17-year olds who violate municipal ordinances, including truancy, habitual truancy and dropout ordinances.

a. A ***juvenile court*** may obtain jurisdiction over a habitual truant or dropout in one of three ways: (1) through the filing of information alleging that a juvenile under the age of 18 years is in need of protection or services based on habitual truancy or being a dropout; (2) through the filing of information alleging that a juvenile under the age of 17 years has violated a municipal habitual truancy or dropout ordinance; or (3) through the issuance of a citation to the child alleging that a juvenile under the age of 17 years has violated a municipal habitual truancy or dropout ordinance and directing the child to appear in juvenile court.

b. A ***municipal court*** may obtain jurisdiction over a juvenile under the age of 18 years when the juvenile is alleged to have violated a municipal habitual truancy or dropout ordinance and is issued a citation directing the juvenile to appear in municipal court. However, for a dropout ordinance, a municipal court has jurisdiction only if the juvenile is 12 years of age or older.

[ss. 938.02 (10m), 938.125, 938.13 (6) and (7) and 938.17 (2), Stats., as affected by 1997 Wisconsin Acts 35, 205 and 239.]

I. JUVENILE COURT PROCEDURES

The procedures described in this section apply when a ***juvenile court*** exercises jurisdiction over a child, regardless of whether the child is alleged to be in need of protection or services based on habitual truancy or being a dropout or alleged to have violated a municipal truancy, habitual truancy or dropout ordinance. However, if the ***citation*** issued for a violation of a municipal ordinance directs the child to appear in juvenile court, the citation may serve as the initial pleading and, when filed with the court, is sufficient to give the juvenile court jurisdiction over the child. [s. 938.25 (5), Stats.] In this case, the procedures described in items 1. to 4., below, relating to filing of information, intake inquiry, deferred prosecution and juvenile court petition, do not apply; the juvenile court process begins with the notice and summons, if necessary, and the plea hearing.

1. Filing of Information

The school attendance officer may file information on a habitual truant or dropout with a juvenile court or the child may be referred to juvenile court for violation of a municipal truancy, habitual truancy or dropout ordinance. The court may only exercise jurisdiction over a habitually truant child if evidence is provided that the required school activities (described in Section H., above) have been completed. [ss. 118.16 (5), (5m) and (6) (a) 1., 938.125 (intro.) and (2), 938.13 (6) and 938.17 (2) (a) 1., Stats., as affected by 1997 Wisconsin Acts 35 and 239.]

2. Intake Inquiry

Upon receipt of information indicating that a juvenile is in need of protection or services based on habitual truancy or being a dropout or has violated a municipal truancy, habitual truancy or dropout ordinance, a juvenile court intake worker must conduct an intake inquiry on behalf of the juvenile court to determine whether the available facts establish *prima facie*

jurisdiction of the juvenile court and to determine the best interests of the juvenile and of the public with regard to any action to be taken. As part of the intake inquiry, the intake worker must inform the juvenile and the juvenile's parent, guardian and legal custodian that they may request counseling from a person designated by the court to provide dispositional services. The intake worker may conduct "multidisciplinary screens" and "intake conferences" after notifying the juvenile, parent, guardian or legal custodian. No juvenile or other person may be compelled by an intake worker to appear at any conference, participate in a multidisciplinary screen, produce any papers or visit any place. [s. 938.24 (1) to (2m), Stats.]

If the intake worker determines, as a result of the intake inquiry, that the juvenile should be referred to juvenile court, the intake worker must request that the district attorney, corporation counsel or other appropriate official file a petition. If the intake worker determines that the case should be subject to a deferred prosecution agreement or should be closed, the intake worker must so proceed. The intake worker must recommend that a petition be filed, enter into a deferred prosecution agreement or close the case within ***40 days*** after receipt of the referral information. [s. 938.24 (3) to (5), Stats., as affected by 1997 Wisconsin Act 181.]

Before conferring with the parent or juvenile during the intake inquiry, the intake worker must personally inform the parent and a juvenile 10 years of age or older that the referral may result in a petition to juvenile court; what allegations could be in the petition; the nature and possible consequences of the proceedings; and the juvenile's rights in the proceedings. [s. 938.243, Stats., as affected by 1997 Wisconsin Act 35.]

3. Deferred Prosecution

The intake worker may enter into a written deferred prosecution agreement with all parties if the intake worker determines that neither the interests of the juvenile nor the public require the filing of a petition to initiate formal proceedings. Deferred prosecution is available only if the facts persuade the intake worker that the jurisdiction of the court, if sought, would exist. Also, the consent of the juvenile and the parent, guardian or legal custodian is required. [s. 938.245 (1), Stats.]

A deferred prosecution agreement may provide for any one or more of the following:

a. That the juvenile and the juvenile's parent, guardian or legal custodian participate in individual, family or group counseling and that the parent, guardian or legal custodian participate in parenting skills training.

b. That the juvenile and a parent, guardian and legal custodian abide by such obligations, including supervision, curfews and school attendance requirements, as will tend to ensure the juvenile's rehabilitation, protection or care.

c. That the juvenile submit to an alcohol or other drug abuse assessment or participate in an alcohol or other drug abuse education or outpatient treatment program.

d. That the juvenile participate in a restitution project if the act for which the deferred prosecution agreement is being entered into resulted in property damage or actual physical injury to another person excluding pain and suffering, or that the juvenile's custodial parent make reasonable restitution. (This alternative would not be appropriate if the sole allegation involving the juvenile was habitual truancy.)

e. That the juvenile participate in a supervised work program or community service project. A supervised work program may not conflict with the juvenile's regular attendance at school.

f. That the juvenile be placed with a "volunteers in probation program" under s. 973.11 (2), Stats., if the chief judge of the judicial administrative district has approved such a program established in the juvenile's county of residence and the juvenile is alleged to have committed an act that would constitute a misdemeanor if committed by an adult. (This alternative would not be appropriate if the sole allegation involving the child was habitual truancy.)

g. That the juvenile be placed in a "teen court" program if the chief judge of the judicial administrative district has approved such a program established in the juvenile's county of residence.

h. That the juvenile be placed in a "youth village" program under s. 118.42, Stats. A "youth village" program is a program, operated by a nonprofit corporation, designed to provide an alternative education experience for pupils whose home or social environment seriously interferes with their educational progress and who are functioning below their grade level in basic academic skills, are behind in academic credits or have a record of poor grades or attendance problems.

[ss. 118.42, 938.245 (2) (a), 938.34 (2g) and (5g) and 973.11 (2), Stats., as affected by 1997 Wisconsin Acts 183 and 205.]

If the deferred prosecution agreement is based on an allegation that the juvenile has violated a municipal habitual truancy ordinance, it may require the juvenile's parent, guardian or legal custodian to attend school with the juvenile. [s. 938.245 (2v), Stats., as created by 1997 Wisconsin Act 239.]

A deferred prosecution agreement may not exceed one year, except that a juvenile's participation in a "youth village" program may be extended for up to an additional one year. [s. 938.245 (2) (a) 9. and (b), Stats.]

A deferred prosecution agreement may be terminated upon the request of the juvenile, parent, guardian or legal custodian, except that, if the child is participating in a "youth village" program, termination by the court is required. Also, if at any time during the period of the agreement, the intake worker determines that the obligations imposed under the agreement are not being met, the intake worker may cancel the agreement. [s. 938.245 (5) and (7), Stats., as affected by 1997 Wisconsin Acts 80 and 239.]

4. Juvenile Court Petition

If the intake worker requests that a petition be filed with juvenile court, the district attorney, city attorney, corporation counsel or other appropriate official must file a petition, close the case or refer the case back to intake or the law enforcement agency investigating the case within ***20 days*** after the date that the intake worker's request is filed. The district attorney, city attorney, corporation counsel or other official may refer the case back to the intake worker only if he or she decides not to file a petition or determines that further investigation is necessary.

If the case is referred back to the intake worker after a decision not to file a petition, the intake worker must close the case or enter into a deferred prosecution agreement within ***20 days***. If the case is referred for further intake investigation, the appropriate agency or person must complete the investigation within ***20 days***. If another referral is made to the district attorney, corporation counsel or other appropriate official, it will be considered a new referral. These time periods may only be extended by a judge for good cause specified under s. 938.315, Stats.

If the district attorney, city attorney, corporation counsel or other appropriate official refuses to file a petition, any person may request the judge to order that the petition be filed and a hearing shall be held on the request. Also, the judge may order the filing of a petition on his or her own motion; the matter may not be heard by the same judge who ordered the filing of the petition.

[s. 938.25 (2) and (3), Stats.]

5. Notice; Summons

After a citation is issued or a petition has been filed, if the parties do not voluntarily appear in court, the court may issue a summons requiring the parent, guardian and legal custodian of the juvenile to appear personally at any hearing involving the juvenile and, if the court so orders, to bring the child before the court at a stated time and place. A summons may also be issued requiring the presence of any other person whose presence, in the opinion of the court, is necessary. [s. 938.27 (1) and (2), Stats.]

The court shall also notify the juvenile, the juvenile's parent, guardian and legal custodian, and any foster parent, treatment foster parent or other physical custodian, of all hearings, except that: (a) notice of hearings on motions need only be given to the juvenile and the juvenile's counsel; and (b) notice is not required when a citation has been issued for a violation of a municipal ordinance and the juvenile's parent, guardian and legal custodian have been notified of the citation. [s. 938.27 (3), (4) and (7), Stats., as affected by 1997 Wisconsin Act 237.]

6. Plea Hearing

The hearing to determine the juvenile's plea to a petition or citation, or to determine whether any private party wishes to contest an allegation that the child is in need of protection or

services, must be held within ***30 days*** after the filing of the petition or the issuance of a citation (unless the child is in secure custody, in which case the plea hearing must be held within 10 days). [s. 938.30 (1), Stats., as affected by 1997 Wisconsin Act 35.]

7. Consent Decree

At any time after the filing of a petition and before the entry of the judgment, a judge or juvenile court commissioner may suspend the proceedings and place the juvenile in one of the following:

a. Under supervision in the juvenile's home or present placement. [s. 938.32 (1) (a), Stats.]

b. In a "youth village" program under s. 118.42, Stats. [s. 938.32 (1) (a), Stats.]

c. If the juvenile is alleged to have committed a delinquent act that would be a misdemeanor if committed by an adult, in: (1) a "volunteers in probation" program under s. 973.11 (2), Stats.; or (2) a "teen court" program if the chief judge of the judicial administrative district has established such a program in the juvenile's county of residence. (These alternatives would not be applicable if the sole allegation involving the child was habitual truancy.) [s. 938.32 (1d) and (1m), Stats.]

Additional alternatives are available if the juvenile also is found to have violated certain laws relating to damage to property, controlled substances or graffiti. [s. 938.32 (1g), (1t) and (1x), Stats.]

The court may establish terms and conditions applicable to the parent, guardian or legal custodian and to the juvenile. If the juvenile is alleged to be in need of protection or services based on habitual truancy, the court may establish as a condition that the juvenile's parent or guardian attend school with the juvenile. [s. 938.32 (1) (a) and (1v), Stats., as affected by 1997 Wisconsin Act 239.]

The order accomplishing the above is known as a "consent decree" and must be agreed to by the juvenile, the parent, guardian or legal custodian and the person filing the petition. The consent decree must be reduced to writing and given to the parties. A consent decree shall remain in effect for up to one year unless the juvenile, parent, guardian or legal custodian is discharged sooner by the judge or court commissioner. [s. 938.32 (1) and (2) (a), Stats., as affected by 1997 Wisconsin Acts 181 and 239.]

Upon its own motion or upon application by the juvenile, parent, guardian, legal custodian, intake worker or any agency supervising the juvenile, the court may, after giving notice to the parties to the consent decree, extend the decree for up to an additional six months or, if the consent decree places the juvenile in a "youth village" program under s. 118.42, Stats., for up to an additional one year, unless a party to the decree objects. If the parent, guardian or legal custodian objects, the judge must schedule a hearing and make a determination on the issue of

extension. A consent decree placing a juvenile in a youth village program may be extended no more than twice. [s. 938.32 (2) (c), Stats.]

If, prior to discharge by the court or the expiration of the consent decree, the court finds that the juvenile, parent, guardian or legal custodian has failed to fulfill the express terms of the consent decree, or that the juvenile objects to its continuation, the hearing under which the juvenile was placed on supervision may be continued to conclusion as if the consent decree had never been entered. [s. 938.32 (3), Stats.]

If the juvenile is discharged by the court or completes the period of supervision under the consent decree, he or she may not be proceeded against in any court for the same offense or an offense based on the same conduct and the original petition shall be dismissed "with prejudice." [s. 938.32 (4), Stats.]

8. Fact-Finding Hearing

If the citation or the petition is contested, the court must hold a fact-finding hearing on the allegations within ***30 days*** of the plea hearing (20 days, if the juvenile is in secure custody). The fact-finding hearing shall be to the court (i.e., there is no right to a jury trial). [ss. 938.30 (7) and 938.31 (2), Stats., as affected by 1997 Wisconsin Act 181.]

The court shall make findings of fact and conclusions of law relating to the allegations of the petition or citation. [s. 938.31 (4), Stats.]

9. Dispositional Hearing

At the close of the fact-finding hearing, the court shall set a date for the dispositional hearing which shall not be more than ***30 days*** from the date of the fact-finding hearing (10 days if the juvenile is in secure custody). If all parties consent, the court may immediately proceed with a dispositional hearing. [s. 938.31 (7), Stats., as affected by 1997 Wisconsin Acts 27, 35, 237 and 252.]

K. JUVENILE COURT DISPOSITIONS

1. Dispositional Alternatives

a. Truancy Ordinance

If a juvenile court finds that a juvenile violated a municipal ***truancy*** ordinance described in Section M. 1., below, the court may enter one or both of the following dispositions, if the disposition is authorized by the municipal ordinance:

(1) An order to attend school.

(2) A forfeiture of not more than $50 for a first violation, or a forfeiture of not more than $100 for any second or subsequent violation committed within 12 months of a previous violation (subject to a maximum cumulative forfeiture amount of not more than $500 for all violations committed during a school semester). If the child is 14 years of age or older, the court may also impose costs. All or part of the forfeiture plus costs may be assessed against the child or the child's parents or guardian, or both.

[s. 938.342 (1d), Stats., as created by 1997 Wisconsin Act 239.]

b. Habitual Truancy Ordinance

If the juvenile court finds that a juvenile violated a municipal ***habitual truancy ordinance*** (described in Section M. 2., below), the court must enter one or more of the following dispositions, if the disposition is authorized by the municipal ordinance:

(1) Suspension of the child's motor vehicle operating privilege (driver's license) for not less than 30 days nor more than one year. The court shall immediately take possession of the suspended license and forward it to the Department of Transportation (DOT) with a notice stating the reason for and duration of the suspension.

(2) An order for the child to participate in counseling, community service or a supervised work program. The costs of any counseling, supervised work program or other community service work ordered by the court may be assessed against the child, the child's parents or guardian, or both.

(3) An order for the child to remain at home, except during hours in which the child is attending religious worship or a school program (commonly called "home detention").

(4) An order for the child to attend any of the following educational programs: (a) a nonresidential educational program, including a program for children at risk, provided by the school district; (b) a nonresidential educational program provided by a licensed child welfare agency; (c) an educational program provided by a private, nonprofit, nonsectarian school located in the school district; or (d) an educational program provided by a technical college district located in the school district. Alternatives (b) to (d) must be provided pursuant to a contractual agreement between the school district and the provider of the educational program.

(5) An order for the DWD to revoke the child's work permit.

(6) An order for the child to be placed in a "teen court" program if the chief judge of the judicial administrative district has approved a teen court program established in the juvenile's county of residence.

(7) An order for the child to attend school.

(8) A forfeiture of not more than $500 plus, if the juvenile is 14 years of age or older, costs. All or part of the forfeiture plus costs may be assessed against the child, the child's parents or guardian, or both.

(9) Any other reasonable conditions, including a curfew, restrictions as to going to or remaining on specified premises and restrictions on associating with other children or adults.

(10) An order placing the juvenile under formal or informal supervision of an agency, the DOC (if the department approves) or a suitable adult, for up to one year, under conditions prescribed by the court, including reasonable rules for the juvenile's conduct designed for the physical, mental or moral well-being and behavior of the juvenile.

(11) An order for the child's parent, guardian or legal custodian to: (a) participate in counseling at his or her own expense; or (b) attend school with the child, or both. However, no such order may be entered by the court until the parent, guardian or legal custodian is given an opportunity to be heard on the contemplated order of the court.

[ss. 938.342 (1g) and (2) and 938.343 (intro.), Stats., as affected by 1997 Wisconsin Acts 3, 36 and 239.]

All of these dispositions are also available for juveniles found to be ***in need of protection or services*** based on habitual truancy if the court finds that the reason that the juvenile is a habitual truant[3] is a result of the juvenile's intentional refusal to attend school rather than the failure of a person in control of the juvenile (e.g., the juvenile's parent or guardian) to comply with the requirement to cause the juvenile to attend school regularly. [s. 938.345 (2), Stats.] In addition, many of the dispositional alternatives available for juveniles adjudged delinquent are available for juveniles found ***in need of protection or services*** based on habitual truancy. These alternatives include:

(1) Counseling of the juvenile, parent, guardian or legal custodian.

(2) Placement of the juvenile under the supervision of the Department of Corrections (DOC), if the DOC approves, a county department, a child welfare agency or a suitable adult.

(3) Placement of the juvenile in his or her home under the supervision of the DOC, a county department or a licensed child welfare agency and an order for the agency to provide specified services to the juvenile and the juvenile's family.

(4) Placement in a "volunteers in probation" program if the chief judge of the judicial administrative district has approved such a program established in the juvenile's county of residence and the juvenile is adjudicated delinquent for the commission of an act that would

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3. This condition also applies to the application of these dispositions to "dropouts." See item c., below. [s. 938.345 (2), Stats.]

constitute a misdemeanor if committed by an adult. (This alternative would not be appropriate if the sole finding involving the juvenile was habitual truancy or dropping out of school.)

(5) Designation of one of the following as placement for the juvenile: (a) the home of a relative; (b) a home which need not be licensed if placement is for less than 30 days; (c) a licensed foster home, treatment foster home or group home; (d) a licensed child caring institution; (e) a "youth village" program under s. 118.42, Stats.; or (f) if the juvenile is 17 years of age or older, an independent living situation.

(6) If it is shown that the rehabilitation, treatment or care of the juvenile cannot be accomplished by means of voluntary consent of the parent or guardian, transfer of the juvenile's legal custody to a relative of the juvenile, a county department or a licensed child welfare agency.

(7) If the juvenile is in need of special treatment or care, an order for the juvenile's parent, guardian or legal custodian to provide such care.

(8) An order for the juvenile to participate in a wilderness challenge program or other experiential education program.

(9) An order for the juvenile to participate in an educational program designed to deter future delinquent behavior by focusing on issues such as decision-making, assertiveness instead of aggression, family and peer relationships, self-esteem, identification and expression of feelings, alcohol and other drug abuse recognition and errors in thinking and judgment.

(10) An order for the juvenile to participate in vocational assessment, counseling and training.

(11) If the juvenile has specialized educational needs, an order for the juvenile to participate in a day treatment program.

[ss. 938.34 and 938.345, Stats., as affected by 1997 Wisconsin Acts 27, 35 and 164.]

Additional alternatives are available if the juvenile is found to have committed certain other delinquent acts.

c. Dropout Ordinance

If the juvenile court finds that a juvenile has violated a municipal ***dropout ordinance*** (described in Section M. 3., below), the court must enter an order suspending the juvenile's driver's license until the juvenile reaches the age of 18 years. If the court finds that suspension of the juvenile's license until age 18 would cause an undue hardship to the juvenile or his or her family, the court may, instead, enter any of the specific dispositions available for juveniles found to have violated a habitual truancy ordinance. [s. 938.342 (2), Stats., as affected by 1997 Wisconsin Act 239.]

In addition to suspension of the juvenile's license until he or she reaches the age of 18 years, many of the dispositional alternatives available for juveniles adjudged delinquent are available for juveniles found ***in need of protection or services*** based on being a dropout, as described in item b., above, relating to habitual truants.

[ss. 938.34 and 938.345, Stats., as affected by 1997 Wisconsin Acts 27, 35 and 164.]

Additional alternatives are available if the juvenile is found to have committed certain other delinquent acts.

2. Notice of School Attendance as a Condition in a Dispositional Order

If school attendance is a condition of a juvenile court dispositional order, the court clerk must notify the school board of the school district, or the governing body of the private school, in which the child is enrolled of that fact within five days after the dispositional order is entered. The order must: (a) specify what constitutes a violation of that condition; and (b) direct the school board to notify the county department that is responsible for supervising the child within five days after any violation of the condition by the child. [ss. 118.125 (2) (cm), 938.355 (2) (c), Stats., as affected by 1997 Wisconsin Act 205.]

(Similar provisions apply to dispositional orders relating to delinquency findings.)

L. TEEN COURT

Rather than filing information with a juvenile court on a habitual truant child, a school attendance officer may refer the child to a teen court program if all of the following apply:

1. The chief judge of the judicial administrative district has approved a teen court program established in the child's county of residence and has authorized the school attendance officer to refer children to the teen court program. Also, the school attendance officer must determine that participation in the teen court program will likely benefit the child and the community.

2. The child and the child's parent, guardian and legal custodian consent to the child's participation in the teen court program.

3. The child has not successfully completed participation in a teen court program during the two years before the date on which the school attendance officer received evidence that activities described in Section H., above have been completed or were not completed due to the child's absence from school.

If a child who is referred to a teen court program is not eligible for participation in the program or does not successfully complete participation in the program, the person administering the program shall file information on the child with the juvenile court. Filing information on a child under this provision does not preclude concurrent prosecution of the child's parent or

guardian for failing to cause the child to attend school regularly as described in Section O., below.

[s. 118.16 (a) 2. and (b), Stats., as affected by 1997 Wisconsin Act 205.]

M. MUNICIPAL ORDINANCE AUTHORITY AND DISPOSITIONS

1. Truancy

a. Authority

A county, city, village or town may enact an ordinance prohibiting a person under 18 years of age from being "truant." [ss. 118.163 (1m), Stats., as affected by 1997 Wisconsin Act 239.]

b. Dispositions

A municipal truancy ordinance shall specify which of the following dispositions are available to the municipal or juvenile court:

(1) An order to attend school.

(2) A forfeiture of not more than $50 for a first violation, or a forfeiture of not more than $100 for any second or subsequent violation committed within 12 months of a previous violation (subject to a maximum cumulative forfeiture amount of not more than $500 for all violations committed during a school semester). If the child is 14 years of age or older, the court may also impose costs. All or part of the forfeiture plus costs may be assessed against the child or the child's parents or guardian, or both.

[ss. 118.163 (1m) and 938.342 (1d), Stats., as created by 1997 Wisconsin Act 239.]

2. Habitual Truancy

a. Authority

A county, city, village or town may enact an ordinance prohibiting a person under 18 years of age from being a "habitual truant." [ss. 118.163 (2), Stats., as affected by 1997 Wisconsin Acts 3 and 239.]

b. Dispositions

A municipal habitual truancy ordinance shall specify which of the following dispositions are available to the municipal or juvenile court:

(1) Suspension of the child's driver's license for not less than 30 days nor more than one year. The court shall immediately take possession of the suspended license and forward it to the DOT with a notice stating the reason for and duration of the suspension.

(2) An order for the child to participate in counseling, community service or a supervised work program. The costs of any counseling, supervised work program or other community service work ordered by the court may be assessed against the child, the child's parents or guardian, or both.

(3) An order for the child to remain at home, except during hours in which the child is attending religious worship or a school program (commonly called "home detention").

(4) An order for the child to attend any of the following educational programs: (a) a nonresidential educational program, including a program for children at risk, provided by the school district; (b) a nonresidential educational program provided by a licensed child welfare agency; (c) an educational program provided by a private, nonprofit, nonsectarian school located in the school district; or (d) an educational program provided by a technical college district located in the school district. Alternatives (b) to (d) must be provided pursuant to a contractual agreement between the school district and the provider of the educational program.

(5) An order for the DWD to revoke the child's work permit.

(6) An order for the child to be placed in a "teen court" program if the chief judge of the judicial administrative district has approved a teen court program established in the juvenile's county of residence.

(7) An order for the child to attend school.

(8) A forfeiture of not more than $500 plus, if the juvenile is 14 years of age or older, costs. All or part of the forfeiture plus costs may be assessed against the child, the child's parents or guardian, or both.

(9) Any other reasonable conditions, including a curfew, restrictions as to going to or remaining on specified premises and restrictions on associating with other children or adults.

(10) An order placing the juvenile under formal or informal supervision of an agency, the DOC (if the department approves) or a suitable adult, for up to one year, under conditions prescribed by the court, including reasonable rules for the juvenile's conduct designed for the physical, mental or moral well-being and behavior of the juvenile.

(11) An order for the child's parent, guardian or legal custodian to: (a) participate in counseling at his or her own expense; or (b) attend school with the child, or both. However, no such order may be entered by the court until the parent, guardian or legal custodian is given an opportunity to be heard on the contemplated order of the court.

[ss. 118.163 (2), 938.342 (1g), (1m) and (2) and 938.343 (intro.), Stats., as affected by 1997 Wisconsin Acts 3, 36, 39 and 239.]

3. Dropouts

a. Authority

A county, city, village or town may enact an ordinance permitting a court to suspend the driver's license of a person who is at least 16 years of age but less than 18 years of age and is a dropout. [s. 118.163 (2m) (a), Stats., as affected by 1997 Wisconsin Act 239.]

b. Dispositions

The ordinance must provide that the court may suspend the person's driver's license until the person reaches the age of 18 years. The court shall immediately take possession of any suspended license and forward it to the DOT with a notice stating the reason for and direction of the suspension. [s. 118.163 (2m) (a), Stats., as affected by 1997 Wisconsin Act 239.]

4. Scope of County Ordinances

A truancy ordinance, habitual truancy ordinance or dropout ordinance enacted by a county is applicable and may be enforced in any part of any city or village located in the county and in any town located in the county, regardless of whether the city, village or town has enacted such an ordinance. [s. 118.163 (3), Stats., as affected by 1997 Wisconsin Act 239.]

N. SANCTIONS FOR VIOLATIONS OF DISPOSITIONAL ORDERS

Both juvenile and municipal courts may impose sanctions on juveniles who violate their dispositional orders related to truancy, habitual truancy or dropping out of school. Such sanctions may be imposed regardless of whether the particular sanction was imposed as a disposition in the order violated by the juvenile if: (1) at the juvenile's dispositional hearing, the court explained the conditions of the dispositional order to the juvenile and informed the juvenile of the possible sanctions that could be imposed for a violation of those conditions; or (2) before the violation, the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands the conditions and possible sanctions. [ss. 938.17 (2) (h) 1. and (i) 1. and 2m. and 938.355 (6) (a) and (an) 1. and (6m) (a) (intro.), (ag) and (am) 1., Stats., as affected by 1997 Wisconsin Acts 205, 239 and 252.] Before imposing a sanction, the court must hold a hearing. [ss. 938.17 (2) (h) 1. and (i) 4. and 938.355 (6) (c) and (6m) (c), Stats., as affected by 1997 Wisconsin Acts 205 and 239.]

The dispositions that may be imposed upon a juvenile for the violation of their dispositional orders are as follows:

1. Truancy

If a juvenile who is found to have violated a municipal ***truancy ordinance***, subsequently, violates a condition of his or her dispositional order, the court (municipal or juvenile) may order as a sanction any combination of the following:

a. Suspension of the juvenile's driver's license for not more than one year. If the juvenile does not hold a valid driver's license, other than an instruction permit or a restricted license, the court may order the suspension to begin on the date the license would otherwise be reinstated or issued or two years after the date of the order, whichever occurs first.

b. Any of the dispositions in s. 938.342 (1g) (b) to (j) and (1m), Stats., relating to habitual truancy ordinance violations. These are the dispositions listed in Section K. 1. b. (2) to (11), above.

[ss. 938.17 (2) (i) 1., 938.342 (1g) (b) to (j) and (1m) and 938.355 (6m) (ag), Stats., as affected by 1997 Wisconsin Acts 205 and 239.]

2. Habitual Truancy

If a juvenile who has been found to have violated a municipal ***habitual truancy ordinance*** or who has been found to be ***in need of protection or services based on habitual truancy***, subsequently, violates a condition of his or her dispositional order, the court (municipal or juvenile) may order as a sanction any combination of the following:[4]

a. Placement of the juvenile in a secure detention facility or the juvenile portion of a county jail that meets standards promulgated by the DOC for not more than 10 days, with the provision of educational services consistent with the juvenile's current course of study during the period of placement. A municipal court may not directly impose this sanction. However, it may petition the juvenile court to impose a sanction and, if the juvenile court imposes the sanction, the juvenile court must order the municipality to pay the county the costs of providing the sanction. Also, placement in a secure detention facility or the juvenile portion of a county jail is subject to the adoption of a resolution by the county board of supervisors authorizing the use of these placements as a sanction.

b. Suspension or limitation on the use of the juvenile's driver's license or of any fish or game license for not more than one year. If the juvenile does not hold a valid driver's license, other than an instruction permit or a restricted license, the court may order the suspension to begin on the date the license would otherwise be reinstated or issued or two years after the date of the order, whichever occurs first.

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4. The imposition of any of these sanctions by a municipal court is subject to the adoption of an ordinance authorizing use of the sanction. [s. 938.17 (2) (cm), Stats., as affected by 1997 Wisconsin Act 205.]

c. Counseling or participation for not more than 25 hours in a supervised work program or other community service work.

d. Detention in the juvenile's home or current residence for a period of not more than 30 days, except during hours in which the juvenile is attending religious worship or a school program.

e. Any of the dispositions described in s. 942.342 (1g) (d) to (j) and (1m), Stats., relating to habitual truancy ordinance violations. These are the dispositions listed in Section K. 1. b. (4) to (11), above.

[ss. 938.17 (2) (cm) and (i) 2m. and 4m., 942.342 (1g) (d) to (j) and (1m) and 938.355 (6m) (a) and (am), Stats., as affected by 1997 Wisconsin Acts 205, 239 and 252.]

3. Dropouts

If a juvenile who has been adjudged by a ***juvenile court*** to have violated a municipal ***dropout ordinance*** subsequently violates a condition of his or her dispositional order, the ***juvenile court*** may order as a sanction any of the following:

a. Placement of the juvenile in a secure detention facility or the juvenile portion of a county jail that meets the standards promulgated by the DOC or in a place of nonsecure custody, for not more than 10 days and the provision of educational services consistent with the juvenile's current course of study during the period of placement.

b. Suspension of or limitation on the use of the juvenile's driver's license or any fish or game license for a period of not more than three years. If the juvenile does not hold a valid driver's license, other than an instruction permit or a restricted license, the court may order the suspension to begin on the date the license would otherwise be reinstated or issued or two years after the date of the order, whichever occurs first.

c. Detention in the juvenile's home or current residence for a period of not more than 30 days under rules of supervisions specified in the order. The order may require electronic monitoring.

d. Not more than 25 hours of uncompensated participation in a supervised work program or other community service work.

If a juvenile who has been found to be ***in need of protection or services based on being a dropout*** violates a condition of his or her dispositional order, the ***juvenile court*** may impose on the juvenile any of the sanctions described above, ***except*** placement in a secure detention facility or juvenile portion of a county jail.

[s. 938.355 (6) (a) and (d), Stats., as affected by 1997 Wisconsin Acts 35, 205 and 239.]

If a juvenile who has violated a ***dropout ordinance*** violates a condition of his or her dispositional order ***imposed by a municipal court***, the municipal court may impose any of the sanctions listed in items a. to d., above, that are authorized by municipal ordinance. However, the court must petition a juvenile court to impose the secure detention sanction specified in item a., above, or home detention with monitoring by an electronic monitoring system, described in item c., above. If the juvenile court imposes either of these sanctions on a petition, it must also order the municipality to pay the county the costs of providing the sanction. [s. 938.17 (2) (h) 1. and 4. and 938.355 (6) (an) 1. and 2., Stats., as affected by 1997 Wisconsin Acts 205 and 239.]

4. Continued Violations

If a juvenile commits a second or subsequent violation of a condition imposed in his or her dispositional order by a ***juvenile court***, the district attorney may file a petition charging the juvenile with contempt of court and seeking the imposition, for that contempt, of any of the sanctions listed in s. 938.34, Stats., relating to dispositions of juveniles adjudged delinquent. Also, any person aggrieved by the juvenile's violation of a condition imposed in his or her dispositional order may proceed against the juvenile for contempt of court under ch. 785, Stats. [s. 938.355 (6g), Stats., as affected by 1997 Wisconsin Act 205.]

Contempt procedures also apply to continued violations of ***municipal court*** orders. The municipal court may impose a $50 forfeiture for contempt. [s. 800.12, Stats.]

O. PROSECUTION OF PARENT OR OTHER PERSON IN CONTROL OF THE CHILD

The person having a child under his or her control (e.g., the child's parent or guardian) may be prosecuted if he or she fails to cause the child to attend school regularly; the prosecution would be brought in circuit court by a district attorney. The prosecution may only be brought following receipt of evidence that the required school activities (described in Section H., above) have been completed or were not required to be completed for the reasons described in Section H., above. The filing of information with a juvenile court on a habitually truant child does not preclude concurrent prosecution of the person in control of the child. However, a person may not be prosecuted under this provision if he or she is prosecuted for contributing to a child's truancy as described in Section P., below. [ss. 118.15 (5) (a) and 118.16 (6) (a), Stats.]

A person who has a child under his or her control who fails to cause the child to attend school regularly is subject to the following sanctions:

1. For a first offense, the person may be fined not more than $500 or imprisoned for not more than 30 days, or both. For a second or subsequent offense, the person may be fined not more than $1,000 or imprisoned for not more than 90 days, or both.

2. The person may be ordered to participate in counseling at his or her own expense.

3. For a first or subsequent offense, the person may be required to perform community service work for a public agency or a nonprofit charitable organization, in lieu of a fine or imprisonment.

4. For a first or subsequent offense, the person may be ordered to attend school with his or her child.

If the defendant proves that he or she is unable to comply with the law because of the disobedience of the child, the action must be dismissed and the child referred to juvenile court.

A person who has under his or her control a child who has been sanctioned under Learnfare (described in Section Q., below) is not subject to prosecution for failure to cause the child to attend school regularly.

[s. 118.15 (5), Stats., as affected by 1997 Wisconsin Act 239.]

Counties and, if they have municipal courts, towns may enact ordinances to impose a forfeiture of not more than $500 upon a person having under his or her control a child between the ages of 6 and 18 years who is not in compliance with the compulsory school attendance laws. [ss. 59.56 (7) and 60.23 (22m), Stats.] Presumably, cities and villages also may enact such ordinances under their general "home rule" authority.

P. PROSECUTION FOR CONTRIBUTING TO A CHILD'S TRUANCY; MUNICIPAL ORDINANCES

A criminal prosecution may also be brought against any person 17 years of age or older, who by any act or omission knowingly encourages or contributes to the truancy of a child. Under the statute, "[a]n act or omission contributes to the truancy of a child . . . if the natural and probable consequences of that act or omission would be to cause the child to be truant." This prosecution would be brought in circuit court by a district attorney. Any person found guilty of this crime may be fined not more than $500 or imprisoned not more than 30 days, or both. A person who has under his or her control a child who has been sanctioned under Learnfare (described in Section Q., below) is not subject to prosecution under this statute. [ss. 939.51 and 948.45, Stats.]

Cities, villages, counties and, if they have municipal courts, towns may enact ordinances prohibiting contributing to the truancy of a child and impose a forfeiture for violations of the ordinance. [ss. 59.54 (22), 60.23 (22) and 66.051 (2), Stats.]

Q. LEARNFARE

Generally, under Learnfare, an individual who has not graduated from high school or earned a high school equivalency certificate, who is a dependent child in a Wisconsin Works (W-2) group that includes a participant in a W-2 employment position and who is 6 to 17 years

of age must meet a school attendance requirement or be subject to sanction (reduction of benefits).

An individual fails to meet the school attendance requirement if he or she is not enrolled in school or was not enrolled in school during the immediately preceding school semester. The W-2 agency or county department must verify enrollment.

[s. 49.26 (1), Stats., as affected by 1997 Wisconsin Act 27.]

In addition, minor parents, habitual truants and dropouts who are subject to the school attendance requirement must participate in W-2 case management which is designed to maintain school enrollment and improve regular school attendance. [s. 49.19 (1) (gm), Stats., as affected by 1997 Wisconsin Act 27.]

R. MISCELLANEOUS

1. Community Service Immunity

Any organization or agency acting in good faith, to which either a habitual truant or a person in control of a child who fails to cause the child to attend school regularly is assigned to a supervised work program or to perform community service work (see Sections K., M. and O., above) shall be provided immunity from civil liability in excess of $25,000 for acts or omissions by or impacting on the habitual truant or person in control. [ss. 118.15 (5) (a) 2., 118.163 (2) (b) and 938.342 (1g) (b), Stats., as affected by 1997 Wisconsin Act 239.]

2. Prohibition Against the Issuance of a License to a Habitual Truant or Dropout

A person under age 18 is prohibited from obtaining a driver's license if he or she is ***not enrolled*** in school or is a ***habitual truant***. Specifically, the DOT may not issue a license to a person under age 18 unless the person provides documentary proof that he or she: (a) is enrolled in a school program or a high school equivalency program and is not a habitual truant; (b) has graduated from high school; (c) has been granted a declaration of high school graduation equivalency; or (d) is enrolled in a home-based private educational program. The child's parent, stepparent or other adult sponsor must sign and verify that the above information is true before DOT may grant the child a license unless the child is permitted under the statutes to sign and verify the information himself or herself. [ss. 343.06 (1) (c), 343.14 (2) (e) and 343.15 (1) and (4), Stats.]

3. Names of Dropouts (Driver's Licenses)

A court (municipal or circuit court) may order a school district to provide to the court a list of all dropouts known to the school district who reside in the county in which the circuit court is located or the municipality in which the municipal court is located. Upon request, the

DOT must assist the court in determining which dropouts have driver's licenses. [ss. 118.163 (2m) (b) and 938.17 (2) (a), Stats., as affected by 1997 Wisconsin Act 239.]

Also, an exception to the confidentiality requirements of the Wisconsin Pupil Records Law requires a school district to provide names of dropouts to a court in response to such a request. [s. 118.125 (2) (c) 2., Stats., as created by 1997 Wisconsin Act 239.]

4. Audit

1997 Wisconsin Act 239 requests the Joint Audit Committee to direct the Legislative Audit Bureau (LAB) to perform a performance evaluation audit to evaluate:

a. The accuracy and uniformity of truancy statistics that are reported to the Department of Public Instruction by school boards; and

b. The effectiveness of using placement of a juvenile in a secure detention facility or juvenile portion of a county jail as a sanction for a violation of a condition of a dispositional order based on habitual truancy from school in deterring truancy. The audit shall compare the effectiveness of that sanction with the effectiveness of other sanctions and dispositions, including attendance at a court-ordered educational program, in deterring truancy.

If the LAB performs the audit, the LAB is required to file its report by September 1, 1999.

[SECTION 74, 1997 Wisconsin Act 239.]

JRH:jt:kja:ksm:rv;kja;lah;kjf